

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:14-CR-240-1BR
No. 5:18-CV-238-BR

WILLIAM SCOTT DAVIS, JR.,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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ORDER

This matter is before the court for initial review of a 28 U.S.C. § 2255 motion pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings. Under this Rule, “[i]f it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief, the judge must dismiss the motion” R. Gov. § 2255 Pro. 4(b). Petitioner appears to be challenging both his conviction and sentence. However, his direct appeal is pending before the Fourth Circuit Court of Appeals. Under such circumstances,

[i]t is possible that appeal could resolve issues raised in the § 2255 motion. Therefore, Petitioner's motion to vacate is premature. *See McIver v. United States*, 307 F.3d 1327, 1331 n.2 (11th Cir. 2002) (noting that “collateral claims should not be entertained while a direct appeal is pending” because direct review relief may render moot the issues also raised on collateral review); *Walker v. Connor*, 72 F. App'x 3 (4th Cir. 2003) (recognizing that § 2255 motion is premature when direct criminal appeal is pending); and Rules Governing Section 2255 Proceedings, Rule 5 advisory committee note (stating the orderly administration of criminal law precludes considering a § 2255 motion while appeal is pending absent extraordinary circumstances).

Flores-Rojas v. United States, No. 3:08CR34, 2010 WL 92437, at *1 (W.D.N.C. Jan. 6, 2010).

Petitioner's motion is DISMISSED WITHOUT PREJUDICE. The court finds that petitioner has not made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Pursuant to Rule 11(a) of the Rules Governing Section 2255 Proceedings, a certificate of appealability is DENIED.

This 31 May 2018.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge